Supreme Court, U. S.
FILED
MAR 10 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1389

NANCY JANE REINE

Petitioner,

versus

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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IN THE

SUPREME COURT OF THE UNITED STATES

No.

NANCY JANE REINE

Petitioner,

versus

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered on December 13, 1979 in the matter of State of Louisiana versus Nancy Jane Reine, No. 64,898 on the docket of said court which denied petitioner's application for a rehearing and thereby affirmed the jury verdict of the Eighteenth Judicial District Court which found petitioner guilty of manslaughter.

CITATIONS TO OPINIONS BELOW

The opinions below are not reported. 377 So. 2d 131.

JURISDICTION

The judgment of the Supreme Court of Louisiana affirming the verdict of the Eighteenth Judicial District Court was entered on October 17, 1979. An application for rehearing was timely filed by petitioner and the Supreme Court of Louisiana denied said application on December 13, 1979. At petitioner's request, the Louisiana Supreme Court, on December 20, 1979, ordered a stay of execution of its decree for a period of ninety (90) days in order that petitioner might apply to this Honorable Court for a writ of certiorari.

The juridiction of this Honorable Court is invoked under 28 U.S.C., Section 1257 (3), petitioner claiming that a Louisiana statute is invalid on the ground that it is repugnant to the Due Process Clause of the 14th Amendment to the United States Constitution and, petitioner claiming a right under the 14th Amendment of the United States Constitution.

QUESTIONS PRESENTED

1) Whether a conviction for manslaughter may validly be sustained when the defendant was acquitted of second degree murder and the record does not contain any evidence that the defendant acted in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self control and cool reflection.

Resolution of this major issue depends in part upon resolution of the subordinate questions of:

a) Whether Louisiana Code of Criminal Procedure Article 814 may constitutionally be applied to submit to the jury a charge on manslaughter when the evidence provides no factual basis by which the jury could return that verdict, and

b) Whether the Louisiana Constitution of 1974, Article 5, Section 5 (c), to the extent that it prohibits review of the sufficiency of evidence to convict the accused beyond a reasonable doubt, violates due process of law.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

1) Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2) Article 5, Section 5 (c) of the 1974 Louisiana Constitution, which states:

> "§5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges
>
> • • •
>
> (c) Scope of Review. Except as otherwise provided by this Constitution, the jurisdiction of the Supreme Court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law."

3) Louisiana Revised Statute 14:31(1), which provides as follows:

> "§ 31. Manslaughter

Manslaughter is:

(1) A homicide which would be murder under either Article 30 (first degree murder) or Article 30.1 (second degree murder), but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self control and cool reflection. Provocation shall not reduce a homicide to manslaughter if the jury finds that the offender's blood had actually cooled, or that an average person's blood would have cooled, at the time the offense was committed; ****."

4) Louisiana Revised Statute 14:30.1 (b), which provides:

"§30.1 Second Degree Murder

Second degree murder is:

(b) The killing of a human being when the offender has a specific intent to kill under circumstances that would be first degree murder under Article 30 but the killing is accomplished without any of the aggravating circumstances listed in Article 905.4 of the Louisiana Code of Criminal Procedure."

5) Louisiana Code of Criminal Procedure Article 814, which provides:

"Article 814. Responsive verdicts; in particular

A. The only responsive verdicts which may be rendered where the indictment charges the following offenses are:

**

3. Second Degree Murder

Guilty
Guilty of Manslaughter
Not Guilty

STATEMENT OF THE CASE

In the early morning of June 12, 1978, Arnold Reine, Jr., was found with a wound in the head while in his bed. Vol. 6 pp. 22-25. Later that morning, Reine died at Pointe Coupee Parish General Hospital. Vol. 6 p. 147.

Reine's wife, petitioner, Nancy Jane Reine, was indicted by the Pointe Coupee Parish Grand Jury on September 25, 1978, for the second degree murder of her husband. Petitioner entered a plea of not guilty and was tried before a jury.

Neither testimony nor physical evidence was introduced by the State or the defense which suggested or from which could be inferred that there had been a homicide "committed in sudden passion or heat of blood **immediately** caused by **provocation** sufficient to deprive an average person of his self-control and cool reflection."

At the conclusion of the testimony and arguments, the judge instructed the jury on the lesser and included offense of manslaughter. "Thus," charged the judge, "in order to convict the defendant of manslaughter, you must find: first, that the defendant killed Arnold Reine, Jr. and, second; that the defendant had a specific intent to kill or inflict great bodily harm, and third; that the killing was committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection." Vol. 7, p. 169.

The jury returned a verdict of guilty of manslaughter.

Petitioner filed a motion for new trial and a motion seeking arrest of judgment which motions were denied by the trial court. Subsequently, petitioner was sentenced to serve eighteen (18) years at hard labor.

Upon motion of petitioner on March 22, 1979, an order of appeal to the Supreme Court of Louisiana was granted. Following oral argument before that court, Nancy Jane Reine's conviction was affirmed, without opinion, on October 17, 1979. Petitioner timely filed an application for rehearing with the Louisiana Supreme Court which was denied by a vote of 5 - 2 on December 13, 1979, without reasons.

On December 20, 1979, the Supreme Court of the State of Louisiana, entered an order staying execution of the decree for a period of ninety (90) days in order to permit petitioner to apply for a writ of certiorari to this Court.

The facts material to consideration of the questions presented are not found in the record, for it is the very absence of those facts, or evidence, which gives rise to this appeal by Nancy Jane Reine.

HOW THE FEDERAL QUESTIONS WERE PRESENTED

The Federal questions sought to be reviewed here were raised in the trial court by motion for a new trial and by motion in arrest of judgment. The following reason was given, inter alia, in support of each motion:

> "There was no evidence introduced which could form the basis for a verdict of manslaughter in that there was no evidence indicating that the defendant committed the offense in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of self-control and cool reflection." Vol. 1, pp. 65, 66.

Petitioner assigned as error, the ruling of the trial court denying said motions, (Vol. 1, p. 69), and appealed to the Louisiana Supreme Court where the following error of the trial court was urged by way of brief and oral argument, Vol. Supp. p. 9.

Inter Alia

> "V. The Court erred in not granting a new trial and/or the Motion in Arrest of Judgment in that there was no evidence introduced which could form the basis for a verdict of manslaughter in that there was no evidence indicating that the defendant committed the offense in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of self-control and cool reflection."

In the application for rehearing directed to the Louisiana Supreme Court, petitioner urged, inter alia, that a rehearing should be granted because of error of the trial court in:

> "II. Failing to grant a new trial and/or the motion in arrest of judgment because the due process standards of *Jackson v. Virginia* were violated when the jury returned a verdict of manslaughter despite there being no evidence introduced to show that the offense was committed in sudden passion or heat of blood." Vol. Supp. p. 22.

In the petition filed in the Supreme Court of Louisiana for a stay of execution of the decree (Vol. Supp., p. 44) it was alleged, *inter alia*:

"2.

That the opinion and decree of this Honorable Court deprives petitioner of the rights guaranteed to her under Article I Section 2 of the 1974 Louisiana Constitution and of the 14th Amendment of the Constitution of the United States in depriving her of liberty without due process of law as follows:

a) Petitioner was convicted of the crime of manslaughter despite there being no evidence introduced to show that the offense was committed in sudden passion or heat of blood.

••••

d) The Louisiana responsive verdict procedure is unconstitutional when it allows the jury, as in petitioner's case, to choose a verdict for a lesser offense which is not supported by the evidence because the jury is unable to convict on the crime charged."

REASONS FOR GRANTING THE WRIT

This Court has consistently proclaimed that a conviction based on a record lacking any evidence as to an essential element of the offense charged violates due-process. *Thompson v. Louisville*, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654 (1960); *Johnson v. Florida*, 391 U.S. 596, 88 S.Ct. 1713, 20 L.Ed. 2d 838 (1968); *Harris v. United States*, 404 U. S. 1232, 92 S.Ct. 10, 30 L.Ed. 2d 25 (1971).

Yet Louisiana's responsive verdict statute, Code of Criminal Procedure Article 814, fosters a system of criminal pro-

cedure in which every jury in a second degree murder case is instructed on the crime of manslaughter and, as stated by Justice Stevens, "is permitted to consider (that lesser verdict) even if there is not a scintilla of evidence to support the lesser (verdict)." *Roberts v. Louisiana*, 428 U.S. 325, 336, 96 S.Ct. 3001, 3006, 49 L.Ed. 2d 974 (1976).

This responsive verdict procedure has withheld constitutional attack in the Louisiana Supreme Court for two reasons. In *State v. Peterson*, 290 So.2d 307, 311 (La. 1974), the court explained that, in the first place, the presence of passion is not an essential element of the crime of manslaughter, but rather, in the nature of a defense, because it need not be proven beyond a reasonable doubt by the State.

Secondly, by Constitutional mandate, the Louisiana Supreme Court may not look to the evidence adduced upon trial to see if responsive verdicts are warranted. *Louisiana Constitution* of 1974, Article 5, Section 5 (C).

However, in *Peterson*, supra, while explaining that "passion" is a defense, not an element of manslaughter, Justice Barham says, ". . . in this jurisdiction 'passion' may be inferred by the jury from the evidence adduced upon trial by the State . . . ," at page 311. Whether or not "passion" is called an element, a mitigating factor, or a defense to the crime of manslaughter, evidence pertinent to that issue must be introduced before the jury can return such a verdict.

If the theory of the State is correct, that applicant had committed a murder based on the alleged statements made by applicant, the letter which she had written stating she had desired to kill her husband and her desire to acquire knowledge in the use of a firearm, then she could not have been convicted of manslaughter under the very provisions of La. R.S. 14:31

(1) which states "Provocation **shall not reduce** a homicide to manslaughter if the jury finds . . . . " (emphasis supplied).

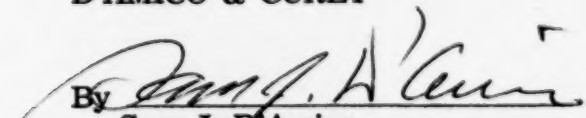
In addition, Louisiana's evidentiary rule which prohibits review of the sufficiency of evidence by the Highest Court, is unconstitutional in application when, as in petitioner's case, the court upholds a conviction based upon a record which cannot reasonably support a finding of guilt beyond a reasonable doubt. The recent decision by this Court in *Jackson v. Virginia*, ____ U.S. ____, 99 S.Ct. 2781 (1979) indicates that federal due process requirements now mandate review to assure against conviction on patently deficient evidence through an arbitrary finding of guilt.

It is submitted that the responsive verdict of manslaughter returned by the jury against petitioner is a farcical and arbitrary determination of fact which the jury had no possible means of determining.

This Court should grant a writ of certiorari to review the constitutionality of the statute which charges the jury on a verdict unsupported by the evidence and the application of that rule which resulted in a constitutionally invalid conviction of petitioner.

Respectfully submitted:

D'AMICO & CURET

By 

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APPENDIX

APPENDIX

SUPREME COURT OF LOUISIANA

NO. 64,898

STATE OF LOUISIANA

V.

NANCY JANE REINE

Appeal from the 18th Judicial District Court
Parish of Pointe Coupee,
Honorable Ian W. Claiborne, Judge

PER CURIAM.

Affirmed.

SUPREME COURT OF LOUISIANA

NO. 64,898

STATE OF LOUISIANA

V.

NANCY JANE REINE

APPEAL FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT,

PARISH OF POINTE COUPEE,
HONORABLE IAN W. CLAIBORNE, JUDGE

On Application for Rehearing

Denied.

JAD

WFM

JLD

FAB

Summers, C. J., and Calogero, J., would grant the rehearing.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing petition has been served on (1) Honorable Samuel C. Cashio, District Attorney, Parish of Pointe Coupee, State of Louisiana, (2) The Eighteenth Judicial District Court for the Parish of Pointe Coupee, Louisiana and (3) The Supreme Court of the State of Louisiana, by depositing the same in the United States Mail, with first class postage, prepaid, properly addressed to the respective addresses.

Baton Rouge, Louisiana, this 7th day of March, 1980.

Sam J. D'Amico
Attorney for petitioner,
Nancy Jane Reine

Supreme Court, U.S.
FILED
MAY 30 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1389

NANCY JANE REINE

Petitioner,

versus

STATE OF LOUISIANA

RESPONSE OF THE STATE OF LOUISIANA TO THE PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1389

NANCY JANE REINE

Petitioner,

versus

STATE OF LOUISIANA

RESPONSE OF THE STATE OF LOUISIANA TO THE PETITION FOR WRIT OF CERTIORARI

I.

AS TO THE ISSUE OF THE RESPONSIVE VERDICT OF MANSLAUGHTER TO AN ORIGINAL CHARGE OF SECOND DEGREE MURDER. LOUISIANA CODE OF CRIMINAL PROCEDURE ARTICLE 814.

The petitioner argues that the jury application of the responsive verdict of manslaughter to an original charge of murder under Article 814 of the Louisiana Code of Criminal Procedure is unconstitutional when the evidence is silent as to the issue of "Sudden Passion" or "Heat of Blood."

The rationale behind Louisiana's responsive verdict statute can be found in the legislative intent in establishing enumerated specific responsive verdicts for the most common crimes, based upon prior jurisprudential rules established by the courts of the State of Louisiana.

The criteria for determining responsiveness in Louisiana if it has not been specifically established by the legislature is as follows:

> "First, all essential elements of the lesser offense must be included in the indictment for the offense charged. Second, the generic offenses must be segregated from the non-generic offenses. To do this, the genus of the crime charged in the indictment is determined, and each of the lesser crimes compared with it. If the lesser crime is of the same generic class, it is responsive, if not, it is not responsive. If the lesser offense meets both of these tests, it may be the subject of a valid and 'responsive' verdict." Comment, 5 LA. L. REV. 603, 609 (1944).

The Supreme Court of the State of Louisiana has spoken concisely on the constitutionality of the responsive verdict of manslaughter to an original charge of second degree murder. *State v. Peterson*, 290 So.2nd 307, 311 (LA. 1974). In that case, defendant argued manslaughter is not a legal or constitutional verdict, especially in a case where there is no evidence to support such a verdict, (That is, no evidence of the "Passion" element). This is the same issue before this Honorable Court. It is clear from a reading of the second degree murder statute and the manslaughter statute (Revised Statute 14:30.1 and Revised Statute 14:31 respectively) that all of the essential elements of the two crimes are identical and the only exception is that the statutory definition of man-

slaughter provides that the killing, which would otherwise be murder, is "committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self control and cool reflection." R.S. 14:31, Supra.

If passion in fact reduces a homicide requiring the same scienter, specific intent, from murder to a less serious crime, manslaughter, then lack of passion may realistically be seen as an additional element which elevates a manslaughter to murder.

However, the presence of passion is in the nature of a defense, and as such the additional "element" of the lack of passion need not be proven by the State in a murder prosecution. Actually, the presence of passion is not an additional element of the crime of manslaughter, rather it is a factor which exhibits a degree of culpability less than that present when a homicide is committed without passion caused by provocation. cf *Peterson*, Supra

In comparing other jurisdictions, the Louisiana Supreme Court cited the Model Penal Code Section 1.08 (4) (c) (proposed draft of 1962), which allowed degrees of culpability as a basis for legislating a responsive verdict as well as comparing the Illinois and Connecticut statutes to Louisiana's conceptial viewpoint, and stating that "Sudden Passion" or "Heat of Blood" provisions operate as a mitigating factor in a murder prosecution, "not a great deal unlike provisions in Criminal Law of other jurisdictions where such factors are considered to be "affirmative defenses." cf *Peterson*, Supra

In *Roberts v. Louisiana*, 428 U.S. 325 (Sup. Ct. 1976),

this court addressed the issue in dicta, by contrasting the North Carolina jurisprudential rule with the Louisiana responsive statute. It is submitted that Louisiana does require that the lesser included offense have all of the essential elements of the greater charge as evidenced by the criteria established above, which classifies the "Passion" issue not as an element of any crime charge, but rather as an automatic defense mechanism which can be used in mitigation, and yet still demand and require the prosecution to prove every essential element of the crime. The main thrust of *Roberts*, Supra, was the unconstitutionality of Louisiana's 1st degree murder statute and we submit that the action of the jury in returning a verdict of manslaughter against petitioner is within constitutionally established principles and does not deny petitioner due process of law.

II.

AS TO THE ISSUE THAT ARTICLE 5, SECTION 5 (c) OF THE LOUISIANA CONSTITUTION PROHIBITS REVIEW BY THE LOUISIANA SUPREME COURT OF THE SUFFICIENCY OF THE EVIDENCE.

The Louisiana Constitution of 1974, states that in crimial matters, the appellate jurisdiction of the Louisiana Supreme Court extends only to questions of law. This constitutional principle has been interpreted by the Louisiana Supreme Court, and, as the issue applies to the facts of this case, the argument of petitioner has no merit, due to the fact that as a matter of law, when this petitioner applied to the trial court for a new trial based upon the contention that there is no evidence at all of an essential element, then that allegation,

clearly became a question of law which was in fact presented to the Louisiana Supreme Court for its review. (See Articles 1 and 6 of petitioner's motion for new trial.) *State v. Blackstone*, 347 So.2nd 193 (LA. 1977), *State v. Reeves*, 342 So.2nd 605 (LA. 1977), and other cases cited therein.

Petitioner alleged in the motion for new trial that there was no evidence introduced which would form the basis for a verdict of manslaughter. As such, petitioner's contention that "Sudden Passion" or "Heat of Blood" are essential for the jury to return a verdict of manslaughter then caused those factual issues to become questions of law and therefore reviewable by the Louisiana Supreme Court.

The Louisiana Supreme Court will review the law and evidence when there is an appealable allegation that the elements of the crime have not been proven. There is no inconsistency in the application of Article 5 Section 5 (c) of the constitution of the State of Louisiana of 1974 and the recent decision of this court in *Jackson v. Virginia*, 99 S. Ct. 2781 (1979), which addressed itself to the issue that a federal court will be allowed to review the sufficiency of the evidence. In practice, the Louisiana Supreme Court does in fact review the sufficiency of the evidence under circumstances when those facts becomes issues of law.

III.

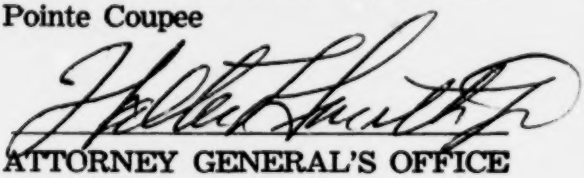
CONCLUSION

This court should deny the writ of certiorari in this case because the responsive verdict of manslaughter to an original charge of murder in the State of Louisiana is based upon

rational constitutional principles, and further because Louisiana's Constitution of 1974 does not prohibit review of the sufficiency of evidence provided that proper attention is directed toward that issue in a judicial review of a lower court proceeding.

Resepectfully submitted,

DISTRICT ATORNEY'S OFFICE
18TH JUDICIAL DISTRICT
Parishes of Iberville, West Baton Rouge and Pointe Coupee

By: 

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FOR THE STATE OF LOUISIANA

APPENDIX

STATE OF LOUISIANA
VERSUS
NANCY JANE REINE

NUMBER 24,882, CRIMINAL DOC.
18TH JUDICIAL DISTRICT COURT
PARISH OF POINTE COUPEE
STATE OF LOUISIANA

MOTION FOR A NEW TRIAL

NOW INTO THE COURT, comes Nancy Jane Reine, defendant in the above entitled and numbered cause, through undersigned counsel, and moves the court that the verdict of the jury be set aside and a new trial ordered, for the following reasons, to wit:

1.

That the verdict of the jury is contrary to the law and the evidence.

2.

The Court erred in permitting the State to offer into evidence conversations which took place between defendant and Bridget Adams prior to June 5, 1978. (See pages 34 to 41 Vol. 1—opening statement of Assistant District Attorney page 19 of Vol. 1.)

3.

The court erred in refusing to suppress the use of the gun into evidence.

4.

The court erred in permitting the introduction of the gun into evidence.

5.

The court erred in permitting Bridget Adams to testify in rebuttal particularly with reference to the testimony relating to what the defendant had said concerning her having obtained a gun (page 31 of Vol. 2 and page 134 *et seq* Vol. 2).

6.

There was no evidence introduced which could form the basis for a verdict of manslaughter in that there was no evidence indicating that the defendant committed the offense in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of self-control and cool reflection.

7.

Defendant is informed and believes and therefore alleges that juror, Mrs. Mary A. Poche, was acquainted with the family of the decendent. However, in the course of the court's interrogation of this juror she denied knowing the family of decedent.

8.

Defendant attaches hereto and makes a part hereof the transcript and all of the evidence taken in this matter.

WHEREFORE MOVER PRAYS that after due proceed-

ings, the verdict of the jury be set aside and a new trial ordered herein.

BY ATTORNEYS:

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CERTIFICATE OF SERVICE

I, hereby certify that a copy of the above and foregoing petition has been served on Mr. Sam J. A'mico esq., Attorney for petitioner, by depositing the same in the United States Mail, with first class postage, pre-paid, properly addressed to the respective addresses.

Baton Rouge, Louisiana, this 29th day of May, 1980.

DISTRICT ATTORNEY'S OFFICE
18TH JUDICIAL DISTRICT

BY: Walter Smith Jr

OFFICE OF THE ATTORNEY GENERAL
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